

REMARKS

Upon entry of the present amendment the claims under consideration are 1-46. Claim 34 has been added hereby in order to present the subject matter of Claim 13 as directly dependent from Claim 1 in independent form without the intervening subject matter of Claim 5. Claims 35-46 have been added to more explicitly claim certain aspects of the present invention presenting distinct improvements over side panel fastening systems known in the art. Support in the specification for the added claims having limitations to the elastomeric nature of the side panels is found, e.g., at page 26, line 15 to page 27, line 1 of the specification. Support in the specification for the added claims having limitations to the non-collinear nature of the side panel distal edges is found, e.g., at page 31, line 11 of the specification. Support in the specification for the added claims having limitations to the overlapping nature of the side panel fastening is found, e.g., Figs. 1 and 8 of the specification. Claims 14, 15, 24, 25, and 33 are hereby amended to expedite prosecution in response to §112 rejections. Claim 26 is amended to further clarify the nature of the two piece structure of a side panel according to that Claim.

All amendments are fully supported by the specification and do not represent new matter.

The Examiner's Detailed Action of 11 July 2003 will now be addressed with reference to any subject headings and paragraph numbers therein.

Claim Rejections 35 USC §112

Claims 2, 14, 15, 24, 25, and 33 stand rejected as indefinite under §112.

Claim 2 is rejected because the phrase "the front and back side panel distal edges" in line 2 allegedly lacks antecedent basis. Applicants respectfully traverse this rejection,

noting that in limitation 3 of Claim 1, each of the front side panel and back side panel are called out as having a distal edge. Therefore, antecedent basis has been provided.

Claims 14, 15, 24, and 25 stand rejected because the phrases “the side panels” and “the chassis” allegedly lack antecedent basis. Applicants respectfully traverse this rejection, noting that a §112 rejection should only be used in aggravated situations where the lack of antecedent basis makes the scope of the claim indeterminate, which is not believed to be the case here. However, in order to expedite prosecution, Applicants have amended the present Claims.

Claim 33 stands rejected because the phrases “the front panel” and “the back panel” allegedly lack antecedent basis. Applicants respectfully traverse this rejection, again noting that a §112 rejection should only be used in aggravated situations where the lack of antecedent basis makes the scope of the claim indeterminate, which is not believed to be the case here. However, in order to expedite prosecution, Applicants have amended the present Claims.

Claim Rejections 35 USC §102

Claims 1-5, 13, 14, 16, 26-30, and 32 stand rejected as anticipated by Ashton et al., US Patent 6,443,940 (hereinafter “Ashton”). Applicants respectfully traverse. It is the contention of the Detailed Action that Ashton meets all limitations of Independent claims 1 and 26, including that limitation that:

“when the garment is laid out flat, each distal edge of each side panel defines a vector extending from one of the waist end edge or the leg end edge along the distal edge of the side panel towards the longitudinal axis of the garment, the vectors of the side panels crossing the longitudinal axis of the garment chassis at congruent angles.”

However, it is respectfully noted that the distal edges of the side panels of Ashton do not meet the definition of "Congruent Angles" as set forth at page 7 of the specification, namely:

"Congruent" refers to angles which fall within the same quadrant of Cartesian coordinates having a center point at the intersection of the longitudinal axis of the garment and the defined lines or vectors, and desirably within about plus minus thirty degrees of true congruency and more desirably within about plus minus five degrees of true congruency.

In other words, Applicants have defined "congruent" to be not only of roughly equal measure, but also to require congruent angles to have the same orientation with respect to the longitudinal axis of the garment, thus defining the direction of slope of the side panel edges as being the same. This is clearly not the case in Ashton. Each embodiment of Ashton shows an "hourglass" shaped garment with the front and back side panel distal edges having a different direction of slope.

The Examiner is referred to MPEP §608.01(o) which specifically points out that: "A term used in the claims may be given a special meaning in the description. No term may be given a meaning repugnant to the usual meaning of the term." The specification has clearly defined the term "congruent" in a manner which is not repugnant with its ordinary meaning. Thus Ashton does not anticipate the presently claimed invention.

As each of the dependent Claims 2-5, 13, 14, 16, 27-30, and 32 incorporate the limitation of "congruent angles" from Claims 1 and 26, as defined in the specification, these Claims are also allowable. Thus, the present rejections must be withdrawn.

It is further noted specifically with respect to Claim 13 that Ashton does not teach the claimed "line of weakness," as defined at page 9 of the specification, in releasably engageable side panels but merely shows a refastenable seam.

At page 5 of the Detailed Action, Claims 1-6, 15-17, and 26-33 stand rejected as anticipated by Toussie, US Patent 2,545,216 (hereinafter "Toussie"). Applicants respectfully traverse. It is the contention of the Detailed Action that Toussie meets all limitations of Independent claims 1 and 26, including that limitation that:

"when the garment is laid out flat, each distal edge of each side panel defines a vector extending from one of the waist end edge or the leg end edge along the distal edge of the side panel towards the longitudinal axis of the garment, the vectors of the side panels crossing the longitudinal axis of the garment chassis at congruent angles."

However, it is respectfully noted that the distal edges of the side panels of Toussie also do not meet the definition of "Congruent Angles" as set forth above with respect to the Ashton rejections. Applicants herewith incorporate by reference the above discussion concerning the cited art's failure to teach congruent angles. Thus, the present rejections must also be withdrawn.

It is further noted generally that each of at least dependent Claims 2, 3, 16, 27, 28, and 29 further define the relation of the side panel edges and that the vectors and angles set forth in the Claims are directional references used to further define the referenced panel edges. See also page 31 of the specification and Fig. 7. Thus, only by ignoring the plain meaning of the claims, or through the use of impermissible hindsight, could the side panel edges of either of the Ashton or Toussie references be said to meet the limitations.

Claim Rejections 35 USC §103

Per page 8 of the Detailed Action, Claims 7-12, 18-23, and 25 stand rejected as obvious over Toussie in view of Anderson, US Patent 5,062,839 (hereinafter "Anderson").

It is the contention of the Detailed Action that Toussie discloses all aspects of the claimed invention with the exception of the fastening components including hook and loop fasteners. As noted above, Toussie does not teach the claimed congruent angles defined by the side panel edges of Claim 1, from which the present Claims depend. Anderson also does not teach such an arrangement of side panels. Therefore, the present rejections should be withdrawn.

The Detailed Action further admits that Anderson is silent as to the arrangement of its hook and loop fasteners. However, the Detailed Action has deemed the claimed arrangement of Claims 9, 10, 20 and 21 to be "obvious matters of design choice ... as the applicant has not shown that such a placement serves any particular purpose or solves any specific problem." Applicants respectfully disagree. Extensive discussion in the specification, e.g., pages 2-5 and 15-16, make clear that the exemplary and claimed embodiments of the invention are designed to solve specific problems by providing specifically enhanced functionalities through the claimed arrangement of parts. Applicants further respectfully submit that, in the claimed arrangements, as would be apparent to a person having ordinary skill in the art upon reading the present specification, the softer "loop" side of a complementary fastener would face the wearer's skin in the event of fastener misalignment, while in the opposite arrangement, the more resilient hook members would face the wearer's skin in the event of fastener misalignment and be much more likely to cause irritation to the wearer. Thus, Applicants have shown that the claimed arrangements solve particular problems and further, are not obvious matters of substitution for parts of equivalent functionality, such as a screw and nail, to which such a rejection might properly be applied.

Per page 9 of the Detailed Action, Claims 6-12 and 18-24 stand rejected as obvious over Ashton in view of Anderson.

It is the contention of the Detailed Action that Ashton discloses all aspects of the claimed invention with the exception of the fastening components including hook and loop fasteners. As noted above, Ashton does not teach the claimed congruent angles defined by the side panel edges of Claim 1, from which the present Claims depend. Anderson also does not teach such an arrangement of side panels. Therefore, the present rejections should be withdrawn.

The Detailed Action further admits that Anderson is silent as to the arrangement of its hook and loop fasteners. However, the Detailed Action has deemed the claimed arrangement of Claims 9, 10, 20 and 21 to be “obvious matters of design choice ... as the applicant has not shown that such a placement serves any particular purpose or solves any specific problem.” Applicants respectfully disagree. Extensive discussion in the specification, e.g., pages 2-5 and 15-16, make clear that the exemplary and claimed embodiments of the invention are designed to solve specific problems by providing specifically enhanced functionalities through the claimed arrangement of parts. Applicants further respectfully submit that, in the claimed arrangements, as would be apparent to a person having ordinary skill in the art upon reading the present specification, the softer “loop” side of a complementary fastener would face the wearer’s skin in the event of fastener misalignment, while in the opposite arrangement, the more resilient hook members would face the wearer’s skin in the event of fastener misalignment and be much more likely to cause irritation to the wearer. Thus, Applicants have shown that the claimed arrangements solve particular problems and further, the claimed arrangements are not

obvious matters of substitution for parts of equivalent functionality, such as a screw and nail, to which such a rejection might properly be applied.

For all the foregoing reasons, all claims presently under consideration are believed to be allowable over the art of record. A notice to that effect is earnestly solicited.

Should the Examiner have any further concerns or questions after consideration of the present paper, the Examiner is invited to call Applicants' undersigned attorney at the below listed number.

A check in the amount of \$302.00 to cover the fee for later submission of Claims 34-46 (1 independent Claim (\$86) and 12 dependent Claims (\$216)) is also submitted herewith.

The Commissioner is hereby authorized to charge to Deposit Account No. 19-3550 any additional fees required.

Favorable consideration is requested.

Respectfully submitted,



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